

February 1, 1999

Ms. Patricia Reedy
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Texas Department of Health
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OR99-0291



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Dear Ms. Reedy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121650.

The Texas Department of Health (the "department") received a request for information regarding complaint number 97-21055. You have supplied the responsive information, contending that it is excepted from public disclosure by section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. We have considered the exception you claim and have reviewed the documents at issue.

We note that the request for information was received by the department on August 8, 1998, and your request for opinion letter related to this request for information was received by our office on November 4, 1998. Government Code section 552.301(a) requires a governmental entity seeking to withhold public information to submit a request for a decision to the attorney general "not later than the 10th business day after the date of receiving the written request." Government Code section 552.302 states: "If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information." This legal presumption that the requested information is open to the public may be overcome only by a demonstration of a compelling interest. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). A demonstration that the requested information is deemed confidential by law is a compelling interest sufficient to negate this presumption. See Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from disclosure all information considered confidential by law, including information made confidential by statute. The information responsive to the subject consists of materials made in response to a report of the abuse, neglect or exploitation of an elderly patient. Such information is made confidential by section 48.101 of the Human Resources Code. This statute reads in pertinent part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

(2) the identity of the person making the report;
and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

This information is confidential pursuant to section 48.101(a) of the Human Resources Code. *See* Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). Consequently, it must not be disclosed except for purposes consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). We further agree, based on the information before use, that none of the provisions permitting release appear to be applicable to the subject information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 121650

Enclosures: Submitted documents

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